IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.157 OF 2006

IN

NOTICE OF MOTION NO.4042 OF 2003

IN

L.C.SUIT NO.2990 OF 2003

WITH

CIVIL APPLICATION NO.210 OF 2006

Sambhaji Baban Mungekar & Ors. ...Appellants

Versus

Chandrakant Baban Mungekar & Ors. ...Respondents

.....

Ms.Trupti P.Rangnekar for Appellants.

Mr.M.D.Pokale for Respondents 1 and 2.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 28, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Appeal takes exception to the Judgment and order passed by the City Civil Court dated January 24, 2006 dismissing the Notice of

Motion preferred by the Appellants/Defendants for stay of proceedings pending before the said Court in terms of Section 10 of the Code of Civil Procedure. The Court below was of the view that the suit pending before this Hon'ble Court is Testamentary Suit for deciding as to whether the will should be probated or not in favour of the Appellants. Whereas, the Suit filed by the Respondents/Plaintiffs is for injunction restraining the Appellants from dispossessing them from two rooms in their possession without due process of law. Indeed, the Suit filed by the Respondents before the City Civil Court is in latter point of time. However, the Suit is for limited relief of injuncting the Appellants not to dispossess Respondents without following due process of law.

3. In this backdrop, it was suggested to the Counsel for the Appellants to make statement that they will not interfere with the possession of the Respondents with regard to the two rooms which are subject matter of suit before the City Civil Court without following due process of law. However, Counsel for the Appellants is unwilling to make

such statement. On the other hand, if such statement was to be made, the Suit pending before the City Civil Court itself can be disposed of.

4. It is seen that the Respondents have still not moved the Trial Court for interim relief during the pendency of the Suit. If the Suit was to be stayed, the Respondents will be precluded from moving the Trial Court for such relief.

5. In the circumstances, this Appeal is disposed of with observations that the Trial Court will not proceed with the Suit pending before it, except for considering the prayer for interim injunction if such application is moved by the Respondents/Plaintiffs. That application if filed, will have to be decided on its own merits.

6. In view of the above order, companion Civil Application also stands disposed of.

A.M.KHANWILKAR, J.